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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/360,103	07/23/1999	MICHAEL N. GUREVICH	007532000500	3674

20872 7590 03/19/2003

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EXAMINER

KHATRI, ANIL

ART UNIT	PAPER NUMBER
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2122

DATE MAILED: 03/19/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/360,103

Applicant(s)

GUREVICH ET AL.

Examiner

Anil Khatri

Art Unit

2122

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 July 1999.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-192 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-192 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-192 are rejected under 35 U.S.C. 101 because the subject matter recites a method for developing an object oriented computer program that provides externalization but it fails to describe any method of making it.

Analysis: Claims 1-192 found to be in technological art since the invention is to be practiced by using a computer and method of it. Since the claims are each of series of steps to be performed on a computer the method and process must be analyzed to determine whether claims are statutory under 35 U.S.C. 101.

Examiner interprets that the present invention of claims at issue does not present any method and not sufficient to make constitutional sense. Therefore, claims 1-192 are an abstract idea of a data structure and is unable of producing a useful results when it is/was fixed in a tangible medium and its functionality can be realized. Therefore, the claimed invention is directed to non-statutory subject matter and rejected under 35 U.S.C. 101. See *In re Warmerdam*, 33 F.3d 1354, 31 USPQ2d 1754 (Fed. Cir. 1994).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 97-144 recite the limitation "a carrier of digital data signal..." Therefore, it is unclear and vague that what applicant is referring it to "carrier wave of digital data signal" so that some reasonable degree of a particularity and distinctness can be realized. There is insufficient antecedent basis for this limitation in the claims. Therefore, claims 97-144 are rejected under 35 U.S.C. 112.

Claim Objections

3. Claims 1-192 are objected to under 37 CFR 1.75 as being in improper form because an unreasonable number of claims and ground of multiplicity is applied. See MPEP § 2173.05(n). Accordingly, the claims 1-192 not been further treated on the merits.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anil Khatri whose telephone number is 703-305-0282. The examiner can normally be reached on M-F 8:30-5:00 PM.

5. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

March 17, 2003


ANIL KHATRI
PRIMARY EXAMINER